IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.381 of 1995.
Reserved on: May 15, 2007.
Decided on: June 12, 2007

Bharat Ram & Anr. **…..Appellants.**

VERSUS

Gita Ram & Anr. **…..Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellants: **Mr.G.D.Verma, Sr.Advocate with Mr.B.C. Verma, Advocate.**

For the Respondents: **Ms.Devyani Sharma, Advocate**

Kuldip Singh, Judge

The defendants are in appeal against the judgment and decree dated 8.8.1995 passed by learned District Judge, Shimla in Civil Appeal No.90-S/13 of 1993 confirming the judgment and decree dated 18.6.1993 passed by learned Sub Judge 1st Class, Shimla in Civil Suit No.60/1 of 1988. The parties are referred in the same manner as were in the trial Court.

2. The facts, in brief, are that the plaintiffs and defendants are the sons and daughter of Sukh Ram. The plaintiffs filed suit for partition of property detailed in Schedule-I to the plaint, rendition of

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

accounts, permanent prohibitory injunction restraining defendants from transferring, alienating, changing the nature of the suit property.

3. The further facts, as pleaded in the plaint, are that plaintiffs and defendants are members of Joint Hindu Family and the suit property is owned by plaintiffs and defendants. The house existing on Khasra No.44 is in possession of defendant No.1 which was constructed by the predecessor-in-interest of the parties. Defendant No.1 had let out the said house in parts to many persons and he had been receiving rent from those tenants. Defendant No.1 has also sold land measuring 8 Biswas to Lila Dutt from the joint property without the consent of the plaintiffs and the plaintiffs apprehend that in this way the entire family property would be wasted. Defendant No.1 has not accounted for the rent received by him, therefore, the plaintiffs filed the suit.

4. The suit has been resisted by the defendants and they have taken preliminary objections of maintainability, estoppel, jurisdiction and valuation. On merits, it has been pleaded that the suit property had already been partitioned in the year 1979 and since then parties are enjoying separate possession and now no part of the suit property is joint. In private partition, house existing on Khasra No.44 consisting of three rooms in the lower storey and three rooms in the upper storey was allotted to defendant No.1 but the structure was not complete at that time. Defendant No.1 by taking loan had spent about

Rs.50,000/- to make it habitable by making additions, alterations. Defendant No.1 has also spent Rs.56,000/- during the year 1984 to 1988 on the construction. The plaintiffs have no right, title or interest in the house standing on Khasra No.44. The plaintiffs are not entitled to any rent. The plaintiffs had inducted tenants in the house situate on Khasra No.8.

5. The trial Court passed the preliminary decree of partition and rendition of accounts on 18.6.1993 in favour of the plaintiffs by returning the finding that each party in the suit is entitled to 1/4th share. The defendants filed appeal against the decision dated 18.6.1993 which has been dismissed by learned District Judge vide impugned judgment and decree. The defendants are in second appeal against the impugned judgment and decree.

6. The appeal has been admitted on the following substantial questions of law:-

(i) Whether the civil Court has no jurisdiction to decide the matter regarding partition of land in view of provisions of Section 178 of H.P. Land Revenue Act and if so, the findings as recorded in the present case are without jurisdiction?

(ii) Whether the Courts below have acted illegally by ignoring the compromise exhibit DW-1/A?

(iii) Whether the private partition with respect to property in suit has been established by the appellants and the decree under challenge is void, unilateral and arbitrary?; And

(iv) Whether presumption of truth as attached to the revenue record has been amply rebutted?

7. I have heard the learned counsel for the parties and have also gone through the record.

8. The learned Senior Counsel appearing on behalf of the defendants has submitted that the Civil Court has no jurisdiction to decide the subject matter of the suit. The Courts below have acted illegally in ignoring compromise Ext.DW-1/A which proves that the property had already been partitioned by way of private partition. The presumption of truth attached to revenue record has been rebutted. The property is not jointly owned by the parties. The learned counsel for the plaintiffs has supported the impugned judgment and decree.

Substantial Question No.1:

9. The learned Senior Counsel has submitted that the suit filed by the plaintiffs is not maintainable inasmuch as the Civil Court has no jurisdiction to try the suit and for this purpose he has relied upon Section 171 of the Himachal Pradesh Land Revenue Act, 1954 (for short 'the Act'). The relevant part of Section 171 of the Act, which

has been relied upon by the learned Senior Counsel, is reproduced below:-

> ***"171. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue Officers:-***Except as otherwise provided by this Act-(1) A Civil Court shall not have jurisdiction in any matter which the State Government or a Revenue Officer is empowered by this Act to dispose of or take cognizance of the manner in which the State Government or any Revenue Officer exercises any powers vested in it or him by or under this Act.
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> (2) A Civil Court shall not exercise jurisdiction over any of the following matters, namely-
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> (i) Xxx xxx xxx
>
> Xxx xxx xxx
>
> (xvii) any claim for partition of an estate, holding or tenancy, or any question connected with, or arising of proceedings for partition not being a question as to title in any of the property of which partition is sought;"
>
> xxx xxx xxx
>
> xxx xxx xxx

10. The submission of the learned Senior Counsel is that jurisdiction of the Civil Court in partition matters is barred by Section 171. An application for partition lies under Section 23 of the Act.

Section 9 of the Code of Civil Procedure deals with the jurisdiction of the Civil Courts. Section 9 C.P.C. is as follows:-

> "***Courts to try all civil suits unless barred.-*** The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.
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> [*Explanation I*].- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.
>
> [*Explanation II*.- For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in *Explanation I* or whether or not such office is attached to a particular place.]

11. The defendants by taking the plea of private partition of the suit property have raised question of title. In ***Leetho versus Chamelo & Ors., 2001 (2) Shimla LC 238,*** it has been held in Para-4 as follows:-

> "Section 171(2)(xvii) of the H.P. Land Revenue Act puts a bar that Civil Court shall not exercise jurisdiction over any claim of partition of an estate, holding or tenancy, or any question connected with, or arising out of

> proceedings for partition, but qualifies that a question as to title should not be involved in any of the property of which partition is sought. From this provision, it is clear that there is no absolute bar and the moment the question of title is raised, the Civil Court gets the jurisdiction."

12. The Supreme Court in ***State of Rajasthan versus Harphool Singh (dead) through his L.Rs (2000) 5 SCC 652,*** in Para-11 has held as follows:-

> "The learned counsel for the appellant strongly relied upon Section 22 and Section 25 of the Act to contend that the order passed by the ADM in exercise of his powers under Section 22 of the Act has become final and the jurisdiction of the civil Court stands ousted in respect of such matters by virtue of Section 25 and therefore the suit could not have been entertained at all by the civil Court. Section 25 of the Act stipulates that a civil Court shall not have jurisdiction in any matter which the Collector is empowered by that Act to dispose of and shall not take cognizance of the manner in which the State Government or Collector or any officer exercises any power vested in it or in him by or under the said Act. … … … … … … In our view, the principles laid down in *Abdul Waheed Khan case* while considering

> a provision like the one before us, that the bar is with reference to any matter which a Revenue Officer is empowered by the Act to determine and the question of title is foreign to the scope of proceedings under the Act, would apply to this case also with all force, that is on the provisions of Section 25 of the Act, as it stands. Even that apart in *State of T.N. v. Ramalinga Samigal Madam* this Court, after adverting to *Dhulabhai* case held that questions relating to disputed claims of parties for title to an immovable property could be decided only by the competent Civil Court and that in the absence of a machinery in the special enactment to determine disputes relating to title between two rival claimants, the jurisdiction of the Civil Court cannot be said to have been ousted."

13. In ***State of Andhra Pradesh versus Manjeti Laxmi Kantha Rao (D) by L.Rs & Ors., AIR 2000 SC 2000*** in Para-5 it has been held as follows:-

> "The normal rule of law is that civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure but such exclusion is not readily inferred and

> the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the Civil Courts to try civil suit. The test adopted in examining such a question is (i) whether the legislature intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it. In Dhulabhai v. State of Madhya Pradesh, (1983) 3 SCR 662: (AIR) 1969 SC 78), it was noticed that where a statute gives finality to the orders of the special Tribunals jurisdiction of the civil Courts must be held to be excluded if there is adequate remedy to do what the civil Courts would normally do in a suit. .. …"

14. In the present case, not only the question of title has been raised by the defendants but suit is not simple for partition but it is for rendition of accounts as well as permanent prohibitory injunction. One of the principle for excluding the jurisdiction of Civil Court is that the alternative forum should have jurisdiction to grant the relief prayed in the suit. The revenue officer has no jurisdiction to grant the relief of

rendition of account and permanent prohibitory injunction which have also been prayed in the present suit. Therefore, viewed from any angle, the present suit is exclusively triable by Civil Court and not by a revenue officer, as urged by the Senior Counsel. Section 171 of the Act is no bar to the suit. Hence, substantial question of law No.(i) is decided against the defendants.

Substantial questions of Law No.(ii) & (iii):

15. The learned Senior Counsel has submitted that the Courts below have ignored compromise Ext.DW-1/A vide which the private partition has been established. The trial Court has taken notice of Ext.DW-1/A in Para-10 of the judgment and has held that this document proves that the property in dispute was the joint property of the parties. The learned District Judge has also noticed Ext.DW-1/A in Paras-16 and 17 of the impugned judgment. The learned District Judge agreed with the findings returned by the trial Court, therefore, it was not necessary for him to give elaborate reasons as held in ***Girijanandini Devi & Others versus Bijendra Narain Choudhary, AIR 1967 SC 1124.*** In Para-12 it has been held that:-

> "We are unable to hold that the learned Judges of the High Court did not, as is contended before us, consider the evidence. It is not the duty of the appellate Court when it agrees with the view of the Trial Court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the Trial Court. Expression of

> general agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice."

16. The document Ext.DW-1/A is of no help to the defendants. This document rather proves that the matter was allegedly compromised vide Ext.DW-1/A. The Ext.DW-1/A is not in the form of memorandum of something which has happened in the past. The close perusal of this document shows that in fact through this document the parties to the documents partitioned their joint property. Therefore, Ext.DW-1/A requires registration. In absence of registration of this document, it is inadmissible in evidence. However, for collateral purpose Ext.DW-1/A can be looked into to show that the property is still joint. Once the property is joint plaintiffs have every right to file a suit for partition. It is significant to note here that defendants also admit the jointness of the property but their defence is that the property stands partitioned by way of private partition which plea they have failed to prove. The substantial questions of law No.(ii) and (iii) are decided against the defendants.

Substantial Question of law No.(iv):

17. The suit property has been recorded as joint property vide Jamabandis Ext.P-1, Ext.P-2 and Ext.P-3. Presumption of truth is attached to Jamabandis. PW-1 Gita Ram, PW-2 Vija Ram, PW-3 Daulat Ram and PW-4 Het Ram have deposed that the suit property is

joint property of the parties. The learned counsel for the defendants has urged that on the basis of Ext.DW-1/A presumption attached to Jamabandis has been rebutted. It has been held above that compromise Ext.DW-1/A proves the jointness of the suit property, therefore, the presumption attached to Jamabandis Ext.P-1, P-2 and P-3 has not been rebutted by cogent and unimpeachable evidence on record. Learned Senior Counsel has failed to point out any other legal evidence on record to rebut the presumption of truth attached to Jamabandis. The substantial question of law No.(iv) is decided against the defendants.

18. No other point was urged.

19. In view of the above discussion, the impugned judgment and decree dated 8.8.1995 passed by the District Judge, Shimla are confirmed and the appeal is dismissed with costs.

20. Interim order, if any, shall stand vacated.

June 12, 2007 ***(Kuldip Singh)***
(soni) ***Judge***